as having put an end to it. It is, "that the officers of the marine corps shall be entitled to, and receive the same pay, emoluments, and allowances, as are now, or may hereafter be allowed to similar grades in the infantry of the army," subject to the exception in the section following the words just cited.

We shall direct the foregoing answers to the questions, upon which the judges in the court below were opposed in opinion, to be certified to that court.

JAMES B. ANDREWS, APPELLANT, *v.* WILLIAM H. WALL AND JOHN H. GEIGER, DEFENDANTS.

An agreement of consortship between the masters of two vessels engaged in the business known by the name of wrecking, is a contract capable of being enforced in an admiralty court, against property or proceeds in the custody of the court.

The case of Ramsay *v.* Allegre, 12 Wheaton, 611, commented on, and explained.

Such an agreement extends to the owners and crews, and is not merely personal between the masters.

If made for an indefinite period, it does not expire with the mere removal of one of the masters from his vessel, but continues until dissolved upon due notice to the adverse party.

Where there is no other evidence than the answer of its having been a part of the original agreement, that such removal should dissolve the contract, the evidence is not sufficient.

Whenever proceeds are rightfully in the possession and custody of the admiralty, it is an inherent incident to the jurisdiction of that court to entertain supplemental suits by the parties in interest to ascertain to whom those proceeds rightfully belong, and to deliver them over to the parties who establish the lawful ownership thereof.

THIS was an appeal from the Court of Appeals in Florida, and grew out of the following circumstances:—

There were two vessels, one called the Globe, and the other the George Washington, engaged in the business of assisting vessels which were wrecked, or in danger of becoming so, on the coast of Florida. Between these two there existed the agreement of consortship, which will be spoken of presently.

For assistance rendered by the Globe to the ship Mississippi and cargo, an amount of $5522 49 was decreed as salvage. Andrews, the appellant, was part owner of the Globe, and Wall and Geiger, the defendants in error, were part owners of the George Washington.

Wall and Geiger filed a petition in the Superior Court for the southern district of Florida, (being the same court which decreed the salvage,) as follows:—

"To the honourable Wm. Marvin, Judge of the United States Superior Court, southern judicial district of Florida, in admiralty.

"Your petitioners respectfully represent, on oath, to your honour, that they, with J. A Thouron, are the only owners of the schooner George Washington; that said schooner has for sometime past been consorted with the sloop Globe, in the business of wrecking upon this reef, and was so consorted with said sloop when that vessel performed the services to the ship Mississippi which have resulted in the payment of salvage to said sloop by your honour, in admiralty, on the 31st day of May, 1841; that a portion of said salvage is justly due and owing unto your petitioners from said consortship, and that the master and agent of said sloop Globe, J. B. Andrews, positively refuses to pay to them any portion of the same. They therefore respectfully represent this matter, and pray the interference of your honour, that you may order the clerk of your honour's court to retain such portion of said salvage, now about to be paid to said sloop, as to your honour may appear equitable under said consortship, due to said petitioners as owners of schooner the George Washington. And they are ready to show to your honour the exact sum due to them under said consortship. And will ever pray.

W. H. Wall,
John H. Geiger,
S. R. Mallory, Proctor."

In conformity with this petition the judge directed the sum of $2455 64 to be retained, which Wall and Geiger claimed by a subsequent petition.

Andrews answered it as follows:—

"The answer of James B. Andrews, part owner of the sloop Globe, would respectfully represent, that a notice of a petition filed by Wm. H. Wall and John H. Geiger, who claim as part owners of the schooner George Washington, claiming a part of the salvage decreed to Thos. Greene, master of the sloop Globe, in the case of Thomas Greene et al. *v.* Ship Mississippi and cargo, and has been served upon him. To which he comes into court, and says, that—

"1. The petitioners have no right to come into your honourable court in this summary way, and obtain a decree against the earnings of the master and crew of the sloop Globe, who were libellants in the above case.

"2. That if there is any thing due by the Globe, her crew and owners, it must be by some contract existing at the time the services for which salvage has been decreed were rendered, and that if such contract exists, it was not made with petitioners by your respondent.

"3. Your respondent admits that there was a consortship or agreement entered into previously to the services rendered to the ship Mississippi, by him, as master of the sloop Globe, and Russel, master of the schooner George Washington, by which they

agreed to divide their respective earnings or gain between each other, their crews, and the owners of the respective vessels, in a certain proportion, viz.: the Globe was to be rated at sixty-three tons, and the George Washington at fifty-three tons, and the number of men each vessel might have on board at the time that any money might be earned. But he alleges that such contract was made between him and Captain Russel for an indefinite time, and considered that it only remained in force so long as they both remained on board of their respective vessels and earned salvage; and that at the time the money in dispute was earned, that Thomas Greene, the mate of the Globe, was master, and in that capacity rendered services to the ship Mississippi, and filed a libel in his own name, as such, and being recognised as master by this court, salvage on the said ship was decreed to him in his own name.

"Whereupon your respondent prays that your honour will dismiss the said petition, and that the amount of the money retained from the salvage decreed to Thomas Greene be paid over to him, together with his costs in this behalf expended. And your respondent, &c.

JAMES B. ANDREWS,
W. R. HACKLEY, Proct. for Resp."

After the cause had been argued, the court gave the following order:—

"Ordered, That the clerk ascertain the number of men on board the sloop Globe and George Washington respectively at the time of the earning of the salvage by the Globe for services rendered the Mississippi and cargo, and that he divide the salvage in that case decreed the Globe, between the Globe and the George Washington, man for man, and ton for ton, taking the Globe at sixty-three tons, and the George Washington at fifty-three tons, and that he pay to Wm. H. Wall and John H. Geiger the George Washington's portion for and on behalf of all persons interested therein.

"Ordered, That each party pay his own costs in this suit."

The result of the order was an apportionment of the fund between the two vessels as follows:—

To the Globe - - - - -	$3066 85
To the George Washington - - -	2455 64
Total salvage - - - -	$5522 49

From this decree Andrews appealed to the Court of Appeals of Florida, which affirmed the sentence, and from this affirmance he appealed to this court.

Clement Cox, for the appellant.
C. J. Ingersoll, for the defendants.

Cox made the two following points:—

1. That the record shows no subsisting contract of consortship at the time of the salvage service.

2. That a court of admiralty has no jurisdiction of the case.

In support of the first point, he said, that he had not been able to find any judicial exposition of the contract of consortship. The court below decided on two grounds: 1st. That the Globe was a wrecker, and, 2d. That contracts of consortship were usual. But the record shows no evidence of these facts, and the court was not warranted in assuming them. 8 Gill & Johns. 449, 456.

Upon the second point, he said that he had not found a case where a court of admiralty had taken such jurisdiction, and it ought not to have been assumed. 12 Wheat. 611, 613; 3 Peters, 433; Baldw. 544; Bee, 199; 1 Pet. Adm. Rep. 223; Gilp. 514, 184; Dunlap's Adm. Pr. 29; 1 Hagg. 306; 13 Peters, 175.

C. J. Ingersoll, for defendants, said, that he could scarcely add any thing to the reasoning upon which the court below founded its opinion, which was inserted in the record. The contract was one of in admiralty character, and the case was like that of joint captors, the rules relating to which were familiar to the court. It was a daily practice in a court of admiralty to distribute funds which were brought into court. The answer itself admitted the contract.

Mr. Justice STORY delivered the opinion of the court.

This is the case of an appeal in admiralty, from a decree of the Court of Appeals of the territory of Florida, affirming the decree of the judge of the Superior Court of the southern judicial district of Florida. It appears from the proceedings, that upon a libel filed in the Superior Court of the territory, in behalf of the owners and crew of the sloop Globe, salvage had been awarded in their favour, against the ship Mississippi; that a part of the salvage so decreed remained in the registry of the court; and that the present petition was filed by Wall and Geiger, on behalf of the owners of the schooner George Washington, for the share of the salvage due to them, as consorting with the Globe in the business of salvage. It seems to be a not uncommon course among the owners of a certain class of vessels, commonly called Wreckers, on the Florida coast, with a view to prevent mischievous competitions and collisions in the performance of salvage services on that coast, to enter into stipulations with each other, that the vessels owned by them respectively shall act as consorts with each other in salvage services, and share mutually with each other in the moneys awarded as salvage, whether earned by one vessel or by both. It is admitted in the answer of the appellant, who was the master and part owner of the Globe, and the original respondent in the court below, that such an agreement or stipulation was entered into, for an indefinite time, between himself, as the master of the Globe, and the master of the George Washington, before the salvage service in question; but he insists that it was to remain in force only so long as both remained masters of their respective

vessels, and earned salvage; and that at the time of the salvage services in question, one Thomas Greene, mate of the Globe, acted as master thereof. He also insists, that the libellants have no right to come into the court, in a summary way, to obtain a share of the salvage; and lastly, he insists that the agreement or stipulation was not made between him and the libellants.

The courts below overruled all these matters of defence; and upon the present appeal the same are brought before us for consideration and decision. In the first place, then, as to the original agreement or stipulation for consortship, it must, although made by the masters of the vessels, be deemed to be made on behalf of the owners and crews, and to be obligatory on both sides, until formally dissolved by the owners. The mere change of the masters would not dissolve it, since in its nature it is not a contract for the personal benefit of themselves, or for any peculiar personal services. It falls precisely within the same rule, as to its obligatory force, as the contract of the master of a ship for seamen's wages, or for a charter-party for the voyage, which, if within the scope of his authority, binds the owner, and is not dissolved by the death or removal of the master. Besides, in the present case, the agreement or stipulation for consortship was for an indefinite period, and, consequently, could be broken up or dissolved only upon due notice to the adverse party; and the mere removal of the master of one of the vessels, by the owner thereof, for his own benefit or at his own option, could in no manner operate, without such notice, to the injury of the other. In the next place, there is not a particle of evidence in the case, that at the time of the agreement or stipulation for consortship, it was agreed between the parties, that a change of the masters should be treated as a dissolution thereof. The answer is not of itself evidence to establish such a fact, but it must be made out by due and suitable proofs; for in the admiralty the same rule does not prevail as in equity, that the answer to matters directly responsive to the allegations of the bill, is to be treated as sufficient proof of the facts, in favour of the respondent, unless overcome by the testimony of two witnesses, or of one witness and other circumstances of equivalent force. The answer may be evidence, but it is not conclusive; and in the present case, the dissolution of the agreement or stipulation for consortship, by the change of the master of the Globe, seems to be relied on as a mere matter of law, and not as a positive ingredient in the original contract.

The material and important question, therefore, is, whether the agreement or stipulation of consortship is a contract capable of being enforced in the admiralty against property or proceeds in the custody of the court? We are of opinion that it is a case within the jurisdiction of the court. It is a maritime contract for services to be rendered on the sea, and an apportionment of the salvage earned therein. Over maritime contracts the admiralty possesses a clear and estab-

lished jurisdiction, capable of being enforced *in personam*, as well as *in rem;* as is familiarly seen in cases of mariners' wages, bottomry bonds, pilotage services, supplies by material-men to foreign ships, and other cases of a kindred nature, which it is not necessary here to enumerate. The case of Ramsay *v.* Allegre, 12 Wheat. 611, contains no doctrine, sanctioned by the court, to the contrary. It is within my own personal knowledge, having been present at the decision thereof, that all the judges of the court, except one, at that time concurred in the opinion that the case was one of a maritime nature, within the jurisdiction of the admiralty, but that the claim was extinguished by a promissory note having been given for the amount, which note was still outstanding and unsurrendered. It became, therefore, unnecessary to decide the other point. The general doctrine had been previously asserted in the case of the General Smith, 4 Wheat. 438, and it was subsequently fully recognised and acted upon by this court, in Peroux *v.* Howard, 7 Peters, 324. Upon general principles, therefore, there would be no difficulty in maintaining the present suit, as well founded in the jurisdiction of the admiralty.

There is another view of the matter, which does not displace but adds great weight to the preceding considerations. This is a case of proceeds rightfully in the possession and custody of the admiralty; and it would seem to be, and we are of opinion that it is, an inherent incident to the jurisdiction of that court, to entertain supplemental suits by the parties in interest, to ascertain to whom those proceeds rightfully belong, and to deliver them over to the parties who establish the lawful ownership thereof. This is familiarly known and exercised in cases of the sales of ships to satisfy claims for seamen's wages, for bottomry bonds, for salvage services, and for supplies of material-men, where, after satisfaction thereof, there remain what are technically called "remnants and surplusses," in the registry of the admiralty. But a more striking example is that of supplemental libels and petitions, by persons asserting themselves to be joint captors, and entitled to share in prize proceeds, and of custom-house officers, for their distributive shares of the proceeds of property seized and condemned for breaches of the revenue laws, where the jurisdiction is habitually acted upon in all cases of difficulty or controversy.

Upon the whole, without going more at large into the subject, we are of opinion that the decree of the Court of Appeals of Florida ought to be affirmed, with costs.